

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**Maria Santana,**

**Plaintiff**

**v.**

**Lehigh Valley Hospital and Health  
Network, Tami Lee, Kim Batman, Karen  
Marzen, and Rhonda Beaty,**

**Defendants**

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**Civil Action No. 05-CV-01496**

**MEMORANDUM & ORDER**

**Stengel, J.**

**Date: August 11, 2005**

Maria Santana initiated this employment discrimination action against Lehigh Valley Hospital and Health Network (LVH), Tami Lee, Kim Batman, Karen Marzen, and Rhonda Beaty, alleging, among other things, that LVH retaliated against her for exercising her rights under the Americans with Disabilities Act of 1990 (ADA) in violation of 42 U.S.C. § 12203. Defendant filed a motion to strike Ms. Santana's demand for compensatory and punitive damages as they relate to her retaliation claim. For the reasons set forth below, I will grant Defendants' motion.

The ADA has four subchapters. The first subchapter relates to employment, the second applies to the provision of public services, and the third relates to public accommodations and services provided by private entities. Each of these subchapters contains its own remedies provision. The fourth subchapter contains miscellaneous sections, including the anti-retaliation provision at issue in this case. See, e.g., Brown v. City of Lee's Summit, 1999 U.S. Dist. LEXIS 17671, at \*3-4 (W.D. Mo. June 1, 1999) (describing the structure of the ADA).

The anti-retaliation provision applies to claims arising under each of the first three

subchapters, and adopts the remedies set forth in each. Specifically, § 12203 states:

(a) Retaliation. No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

....

(c) Remedies and Procedures. The remedies and procedures available under section 107, 203, and 308 of this Act [42 U.S.C. §§ 12117, 12133, and 12188 respectively] shall be available to aggrieved persons for violations of subsections (a) and (b), with respect to title I, title II and title III respectively.

Ms. Santana claims that she was retaliated against in connection with her employment, and therefore, the remedies available under Subchapter I are applicable here. The remedies provision under Subchapter I, § 12117, borrows those remedies set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5. Section 2000e-5 does not provide for compensatory and punitive damages.

The Civil Rights Act of 1991, 42 U.S.C. § 1981a(a)(2), however, expanded the available remedies in some discrimination cases. Section 1981a(a)(2) provides:

In an action brought by a complaining party under the powers, remedies, and procedures set forth in section 706 or 717 of the Civil Rights Act of 1964 [42 U.S.C. § 2000e-5 or 2000e-16] (as provided in section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a)), and section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)(1)), respectively) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. § 791) and the regulations implementing section 501 concerning the provision of a reasonable accommodation, or section 102 of the Americans with Disabilities Act (42 U.S.C. § 12112), or committed a violation of section 102(b)(5) of the Act, against an individual, the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section

706(g) of the Civil Rights Act of 1964, from the respondent.

Because § 1981a(a)(2) does not specifically identify the ADA's anti-retaliation provision among those sections under which compensatory and punitive damages are available, Defendants argue that Ms. Santana's demand for such damages must be stricken. I agree.

Federal courts are divided on the question of whether compensatory and punitive damages are available under the ADA's anti-retaliation provision. See Kramer v. Banc of America Securities, LLC, 355 F.3d 961, 964-66 (7th Cir. 2004) (finding that § 1981a(a)(2) does not permit a plaintiff to recover compensatory and punitive damages for retaliation under the ADA); Rhoads v. Fed. Deposit Ins. Co., 2004 U.S. App. LEXIS 7385, at \*2 (4th Cir. Apr. 16, 2004) (*per curiam*) (same); Johnson v. Ed Bozarth #1 Park Meadows Chevrolet, Inc., 297 F. Supp. 2d 1286 (D. Colo. 2004) (same); Sink v. Wal-Mart Stores, 147 F. Supp. 2d 1085, 1100-01 (D. Kans. 2001) (same); Boe v. AlliedSignal Inc., 131 F. Supp. 2d 1197, 1202-03 (D. Kans. 2001) (same); Brown v. City of Lee's Summit, 1999 U.S. Dist. LEXIS 17671 (W.D. Mo. 1999) (same); Sabrese v. Lowe's Home Centers, Inc., 320 F. Supp. 2d 311 (same); cf. Lovejoy-Wilson v. NOCO Motor Fuels, Inc., 242 F. Supp. 2d 236, 240-41 (W.D. N.Y. 2003) (concluding that compensatory and punitive damages are available); Ostrach v. Regents of the Univ. of California, 957 F. Supp. 196, 200-01 (E.D. Cal. 1997) (same).

In Kramer, the Seventh Circuit conducted a careful analysis of the issue and found that the language of § 1981a(a)(2) was clear, concluding that "a meticulous tracing of the this tangle of interrelated statutes reveals no basis for plaintiff's claims of compensatory and punitive damages in his ADA retaliation claim." 355 F.3d at 965 (quoting Brown, 1999 U.S. Dist. LEXIS at \*8). I find the Seventh Circuit's analysis persuasive. Section 1981a(a)(2) expands the available remedies "against a respondent who engaged in unlawful intentional

discrimination...under...section 102 of the [ADA] or committed a violation of section 102(b)(5) of the [ADA]...” 42 U.S.C. § 1981a(a)(2). It does not extend these remedies to violations of § 12203. “When legislation expressly provides a remedy or remedies, courts should not expand the coverage of the statute to subsume other remedies.... This principle of statutory construction reflects an ancient maxim--expressio unius est exclusio alterius.” Nat’l R.R. Passenger Corp. V. Nat’l Ass’n of R.R. Passengers, 414 U.S. 453, 458 (1974). Because the anti-retaliation provision, § 12203, was not listed in § 1981a(a)(2), compensatory and punitive damages are not available to the plaintiff for her ADA retaliation claim.<sup>1</sup> I will therefore grant Defendant’s motion to strike.

An appropriate order follows.

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<sup>1</sup> I note my agreement, however, with the court’s observation in Sink v. Wal-Mart Stores, 147 F. Supp. 2d 1085, 1101 (D. Kans. 2001), that “while the court can discern no logic in a rule that precludes an award of compensatory and punitive damages in an ADA retaliation case when such damages are available in Title VII retaliation cases, the court is nonetheless confined to the construction of the statute. And while the court cannot say whether Congress intended such a rule or whether the rule is simply the result of an oversight by Congress, it is an issue that Congress should address.”

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**Civil Action No. 05-CV-01496**

**ORDER**

**AND NOW**, this 11th day of August, 2005, upon consideration of Defendant's Motion to Strike the Demand for Compensatory and/or Punitive Damages Under the ADA Retaliation Claim, and Plaintiff's Response thereto, it is hereby **ORDERED** that the motion is **GRANTED**.

**BY THE COURT:**

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**LAWRENCE F. STENGEL, J.**